

### **DETAILED ACTION**

In view of the appeal Brief filed on 01/23/08, PROSECUTION IS HEREBY REOPENED. A new non-final office action is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Nashaat T. Nashed/  
Supervisory Patent Examiner, Art Unit 1652

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Following is ground of the rejection of CLAIMS after final appeal brief:

Claims 1-10, 12-23 and 129-130 were examined in the previous action.

### ***Claim Rejections***

### ***CLAIM Rejection - 35 U.S.C 102***

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Rejection of claims 1-9, 12-23 under 35 U.S.C. 102(e) as being anticipated by Hause et al. (US 2003/0228671) is withdrawn after finding applicants argument persuasive.

Rejection of claims 1-10, 12-23 under 35 U.S.C. 102(e) as being anticipated by Rajgarhia et al. (US 2004/0029238) is withdrawn after finding applicants argument persuasive.

### ***CLAIM Rejection - 35 U.S.C 103a***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-23 and 129-130 are rejected under 35 U.S.C. 103(a) by **as being** obvious over Rajgarhia et al. (US 2004/0029238) in view of Barnett et al. (Yeasts: characterization and identification 2<sup>nd</sup> edition, Cambridge University press ISBN 052135056, page 20-28 from applicant reference) . Rajgarhia et al. teach various recombinant yeast ( *Sachharomyces*, *Kluyvermyces*, *Candida*, etc) strains expressing ( through integration to yeast chromosome or through plasmid ) various exogenous LDH genes including from *K. lactis* or *Rhizopus oryzae* ( paragrpgh 92). which capable of growing in **minimal medium** of cell culture. Rajgarhia et al. also teach method of production of lactic acid ( 95 gm/ 100 gram of glucose) **wherein no ethanol** is produced using said yeast strain comprising fermentation step at **low pH (below ~2.3) in minimal**

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**medium.** However Rajgarhia et al. do not teach a method of selection of AT yeast strain.

It is well known in art how to grow yeast and make a selection of specific strain (ref: Barnett et al.) . Barnett et al teach how to grow yeast strain at different media and pH and select the specific strain. One in knowledgeable in prior art is **motivated** to select Rajgarhia et al's yeast strain that capable to grow at low pH and minimal media and grow it more **lower pH**. As such it would have been obvious to one of ordinary skill in the art to grow Rajgarhia et al's yeast ( *Sachharomyces*, *Kluyvermyces*, *Candida*, etc) strains expressing ( through integration to yeast chromosome or through plasmid ) various exogenous LDH genes including from *K. lactis* or *Rhizopus oryzae* which is capable of growing in **minimal medium** of cell culture and grow it **different media and pH and make a selection of AT yeast strain as taught by Barnett et al.**

Applicant argument is not found persuasive as explained for Rajgarhia et al above. Rajgarhia et al teach generation of new AT yeast strains ( transformation of yeast strain produce new strain) and Barnett teach selection of yeast strain; therefore 35 USC 103(a) is applicable as explained in previous office action.

### Conclusion

Claim 11 is allowable and claims 11-10, 12-23 and 129-130 are rejected.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammad Meah whose telephone number is 571-272-1261. The examiner can normally be reached on 8:30-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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